IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5613 and 5615 both of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATHIKA PVT. LTD.,

Versus

STATE OF GUJARAT

Appearance:

MR DU SHAH for Petitioner

Mr. LR Pujari, AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/09/2000

ORAL JUDGEMENT

Learned advocate Mr. D.U. Shah is appearing for the petitioners. Learned AGP Mr. LR Pujari is appearing for the respondent authorities. These petitions were admitted by this Court on 3rd August, 1990 and ad interim

relief in terms of paragraph 21(C) has been granted in both the petitions. In both the petitions, most of the facts and circumstances of the case are identical and are raising common questions of law and, therefore both are heard together and decided by this common judgment. Both the petitions have been filed by M/s. Rathika Pvt. Ltd. and Bharat H. Patel, Director of the said Company and, therefore, common petitioners in both the petitions, similarly common respondents in both the petitions.

The facts of the special civil application no. 5613 of 1990 are as under, in short :

The petitioners purchased the land of survey No. 4 ad measuring 4047 sq. mtrs. of village Baska, Taluka Halol, District Panchmahals under registered sale deed dated 11th February, 1981. Said land has been purchased by the petitioner for the purpose of their industry. The original owner of the land had made necessary application before the Taluka Development Officer for obtaining permission for converting agricultural land into non agricultural one. The Taluka Development Officer, after making proper inquiry and considering the facts, granted NA Permission by order dated 20th April, 1981. Said land was purchased by the petitioner from the original owners after obtaining permission from the Taluka Development Officer by the original owner as aforesaid. The original owner received notice dated 3rd July, 1986 from the Deputy Secretary (Appeals), Government of Gujarat, Ahmedabad stating inter alia that the orders dated 20.4.1981 made by the Taluka Development Officer were not legal for the reasons stated in the said notice. The very same authority, Dy.Secretary had also issued notice to the petitioner no.1 dated 28th September, 1988 to show cause as to why the order of the Taluka Development Officer dated 20.4.1981 should not be taken into revision under section 211 of the Bombay Land Revenue Code. After taking into consideration the reply and also after hearing the petitioner, the Deputy Secretary (Appeals) under his order dated 12.6.1990, set aside the order passed by the Taluka Development Officer, Halol dated 20.4.1981 which is under challenge in special civil application No. 5613 of 1990.

The facts of the special civil application no. 5615 of 1990 are as under, in short :

The petitioners purchased land s.n. 3 ad measuring 24989 sq. mtrs. of village Baska Taluka Halol under the registered sale deed dated 11.2.1981 The original owner of the land had made necessary application

before the Taluka Development Officer, Halol, after making necessary inquiry and considering the facts, passed two separate orders both dated 1st December, 1980 granting permission for NA Use in respect of both the lands of survey No. 3 and 35. The original owners of the land in question had received the show cause notice dated 3rd July, 1986 from the Deputy Secretary (Appeals), Gujarat State, Ahmedabad stating therein that the order dated 1st December,1981 made by the Taluka Development Officer was not legal for the reasons stated therein.

The petitioner had also received notice dated dated 14th November,1986 issued by the Dy. Collector, Godhra. The petitioner had also received notice from the Dy. Secretary (Appeals) dated 26th September, 1988 asking the petitioner to show cause as to why the orders of the Taluka Development Officer, Halol dated 1st December, 1980 should not be taken into revision under sec. 211 of the Bombay Land Revenue Code and why the same should not be set aside. The Deputy Secretary (Appeals) after considering the reply and also after considering the facts and circumstances of the case, set aside the order granted permission for NA Use by order dated 19th June, 1990 passed by the Taluka Development Officer dated 1.12.1980. This order is under challenge in special civil application no. 5615 of 1990.

Learned advocate Mr. D.U.Shah appearing for the petitioners herein has raised the contention that the Taluka Development Officer was competent to grant or reject the permission for converting the agricultural lands into non agricultural use and, thereafter, it was not open to the State Government to exercise its suo motu powers under section 211 of the Bombay Land Revenue Code. However, he submitted that it is not open to the State Government to exercise such powers after such inordinate and unreasonable delay. He has further submitted that during the intervening period from 1st December, 1980 and the notice issued by the Dy. Secretary (Appeals) dated 26th December, 1988, more than eight years have elapsed. During this intervening period, the petitioners have invested huge amount for development of the land in question and after obtaining NA Permission, necessary construction has been carried out by the petitioner. As regards special civil application no. 5613 of 1990, from the date of the order passed by the TDO on 20.4.1981 to the date of the notice issued by the Dy.Secretary (Appeals) on 28.9.1988, more than seven years have elapsed and therefore, he has submitted that after such unreasonable and inordinate delay, the exercise of suo motu powers under section 211 was not justified. He has

submitted that during the intervening period, on the basis of the NA Permission granted by the TDO, necessary construction work has been carried out and huge amount has been invested which has changed the position of the land and has also changed equity and, therefore, the respondent authority is not justified in taking the orders passed by the Taluka Development Officer into suo motu revision after such unreasonable and inordinate delay. He has further submitted that the petitioner's family is dependent upon the income of the said industry and the same is the source of their livelihood. He has submitted that the impugned orders passed by the Dy. Secretary (Appeals) are required to be quashed and set aside on the ground of unreasonable and inordinate delay alone without entering into the merits of the matter. He has further submitted that it is required to be noted that in these petitions of 1990, though notice of rule has been served, the respondents have not chosen to controvert the contentions raised by the petitioners herein and both the petitions have remained uncontroverted and unchallenged.

Learned AGP Mr. Pujari appearing for the respondent authorities has submitted that the orders in question cannot be set aside only on the ground of delay. According to him, the Deputy Secretary has rightly set aside the orders of NA Permission passed by the Taluka Development Officer after considering merits thereof and, therefore, this court should not interfere with the same while exercising the powers under Article 226and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the respective parties. I have also perused the papers on record.

The question of delay in initiation of such proceedings, whether it should be termed as reasonable or otherwise has been examined by the apex court as well as by this Court in catena of decisions.

This aspect has been recently considered by the apex court in case of Mohamad Kavi Mohamad Amin versus Fatmabai Ibrahim reported in (1997) 6 SCC page 71. The apex court has observed that while exercising the suo motu powers, the Mamlatdar should initiate the inquiry under section 84C within reasonable time. The apex court has also considered the decision of the State of Gujarat versus Patel Raghav Natha reported in 1969 (2) SCC page 187 and has also considered the case of Ram Chand versus

Union of India reported in (1984) 1 SCC 44. In para 2 of the report, the apex court has observed as under:

> "2. Although Mr.Bhasme, learned counsel appearing for the appellant took a stand that under section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. Bug according to him, even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time.In the present case, the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid, the appellant is likely to suffer irreparable injury because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant, reliance was placed on a judgment of Justice S.B.Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1.3.1990 where in connection with section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patel Raghav Natha and in the case of Ram Chand versus Union of India has impressed that where no time limit is prescribed for exercise of a power under a Statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs."

Therefore, in view of the settled legal position as per the decisions reported in 1997 (6) SCC page 71, as

per my opinion, the orders impugned herein are required to be set aside on the ground of unreasonable delay alone without entering into other aspects of the matter.

Learned advocate for the petitioner Mr. Shah has also relied on the decision of this court as well as of the apex court in support of his case. In case of Evergreen Apartment Coop. Housing Society Ltd. v. Special Secretary Revenue Department, Government of Gujarat, 1991 (1) GLR 113, in case of Parshottam Ramaji Rathod v. DD Mistry reported in 1999 (2) GLH 310 as also in case of Shree Ravi Darshan Coop. Housing Society Ltd. versus P. Thakkar reported in 2000 (2) GLR 1639 and in case of Mohammad Kavi Mohamad Amin versus Fatmabai Ibrahim (supra)) as well as in case of Keshavlal A. Mantar v. Dy. Collector in Special Civil Application NO. 2323 of 1989 decided by this court on 16th June, 2000 as well as in case of Ganpat M. Shikari v. State of Gujarat delivered in special civil application no. 1778 of 1987 (Coram : Hon'ble Mr. Justice D.M. Dharmadhikari, C.J.. on 3rd March, 2000. I have also considered the decision of this court in group of petitions being special civil application no. 1332, 1641, 1642 of 1992 and 6943 of 1991 decided by this Court (Coram : M.S. Parikh,J.) on 28th June, 1993.

I have also considered the principles laid down in Manchharam vs. SP Pathak and others in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983 wherein it has been observed that;

> "Where the power is conferred to effectuate a purpose, it has to been exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha and others (1970) 1 SCR 335."

As stated earlier, the apex court has also considered the power which has been exercised by the respondent authorities under sec.84C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Recently, this Court has, in case of Shree Ravi Darshan Coop. Housing Society Ltd. Chalthan and others versus Prafulkumar Thakar, Secretary, Revenue Department and another reported in 2000 (2) GLR 1639 has considered reasonableness of exercise of suo motu powers under sec.211 after the period of more than eight years

and has held as under in para 4 and 5 of the report as under:

"4.I have given my thoughtful consideration to these arguments. Coming to the first point, it is clear from Sec.211 of the Bombay Land Revenue Code, that the revisional power under this section could be exercised by the State Government and certain revenue officers not below the rank of Assistant/Deputy Collector or Superintendent of Survey as the Collector of District is empowered to exercise revisional power under this section. In exercise of this power, the collector can modify, annul or reverse the order which is taken for consideration in suo motu exercise of revisional power under the aid section. The question is what should be the time under which the revisional power is to be exercised by the Collector. Section 211 of the Code does not prescribe any period of limitation but that does not mean that the power under sec. 211 could be exercised at any time at the sweetwill of the revising authority. In the instant case, the auction was conducted by the Special Recovery Officer on 18.5.1981 and mutation entry was made pursuant thereto on 23.5.1981. As against this, the revisional power was exercised by the collector and the order of the special recovery officer was set aside on 30.9.1989 i.e. practically after slightly more than eight years. Whatever may be the reason for exercising suo motu power after such long delay, no explanation has been offered by filing counter affidavit as to what was the occasion for exercising this power after such a long period.

5. The leading case on limitation for exercise of such power is the case of State of Gujarat v. Raghav Natha, 1969 (X) GLR 992. The apex court in this case has observed with reference to sec. 211 of the Code that it is true that there is no period of limitation prescribed under sec. 211 of the Bombay Land Revenue Code, but it is plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and nature of the order. The Apex Court was considering provisions of sec. 65 and sec. 211 of the Code and in that connection, it further observed that sec.65 itself indicates the length of reasonable time

> within which the Commissioner must act under sec. 211. Sec. 65 shows that the period of three months is considered ample for the Collector to make up his mind and beyond that, the Legislature thinks that the matter was so urgent that the permission shall be deemed to have been granted. Reading sec. 211 and sec. 65, it is clear that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. The Commissioner in such matters should also indicate his reasons briefly so that an aggrieved party may carry the matter further if so advised. This period of three months was considered reasonable by the apex court because after the grant of permission for building purpose the occupant is likely to spend money on starting building operations at least within a few months from the date of permission. In this case, the Commissioner set aside the order of the Collector on 12.10.1961 i.e. more than a year after the order and in the view of the apex court, this order was passed too late. This case was followed by this Court in large number of cases. "

Considering these facts which are not disputed by the other side, in one case, there is delay of more than eight years while in the other case, there is delay of more than seven years for initiating the suo motu exercise of powers by the Deputy Secretary (appeals). The petitioners have, during this intervening period, spend huge amount for development of the land in question and the same is the source of their livelihood. The petitions filed in 1990 have remained unanswered till this date. This is also one of the important aspect to be kept in mind while appreciating the contentions raised on behalf of the petitioners. Therefore, in the facts and circumstances of the case as well as in view of the principles laid down by the apex court as well as this court in various decisions referred to hereinabove, as per my view, the action was initiated by the respondents after unreasonable and inordinate delay which is not sustainable and the same is, therefore, required to be quashed and set aside.

Since the petitioners have succeeded only on the ground of unreasonable delay alone, this court does not examine the other contentions raised by the petitioners herein.

Both the petitions succeed and are allowed

accordingly. The impugned order dated 19th June, 1990 passed by Dy. Secretary (Appeals) Revenue Department, Ahmedabad (Annexure "E" to special civil applicationNo. 5615 of 1990) as well as the impugned order dated 12th June, 1990 passed by the Dy. Secretary (Appeals) (Annexure "A" to special Civil Application Non. 5613 of 1990)are quashed and set aside. Rule is made absolute accordingly in both the petitions. There shall be no order as to costs.

21.09.2000. (H.K. Rathod,J.)

Vyas